

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

NICOLAAS PORTER and DENISE  
WELLMAN,

Plaintiff,

v.

BANK OF AMERICA; BAC HOME  
LOANS SERVICING, LP,

Defendants.

CASE NO. C13-5485RBL

ORDER

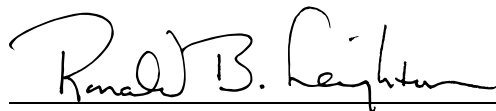
THIS MATTER is before the Court on Defendants' Motion to Dismiss Plaintiffs' Complaint [Dkt. #6] and Plaintiffs' Motion to Remand [Dkt. #11]. The Court has reviewed the materials filed in support and in opposition to each motion. The Court is satisfied that Plaintiffs' Amended Complaint states a claim for breach of contract (settlement agreement). It alleges that after the December 21, 2011 Settlement Agreement, the defendant bank refused to recognize payments made by plaintiffs; refused to recognize the Confidential Settlement Agreement and modified loan amortization; denied payments by plaintiffs resulting in the loan falling into arrears; defendant employees harassed Plaintiff Wellman and her minor children. Plaintiffs allege that the bank's employees, agents and contractors have caused damage to plaintiffs' credit

1 rating and have caused them emotional distress and other common law and statutory damages  
2 that are cognizable. Accordingly, the Motion to Dismiss [Dkt. #6] is **DENIED**.

3 As for the Motion to Remand, the defendant carries the burden of establishing the  
4 propriety of removal. *Duncan v. Stuetzel*, 76 F.3d 1480, 1485 (9<sup>th</sup> Cir. 1986). Any doubt as to  
5 the right of removal is resolved in favor of remand. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9<sup>th</sup>  
6 Cir. 1992). The Court is satisfied that there is total diversity among the parties. The amount in  
7 controversy is questionable as to its sufficiency (more than \$75,000). The removing defendant  
8 must show to a legal certainty that the amount in controversy exceeds the statutory threshold.  
9 The plaintiffs assure the Court that their claims do not exceed the value of \$75,000. They plainly  
10 state this in the Amended Complaint. The circumstances alleged in the Amended Complaint are  
11 relatively minor in nature and support the plaintiffs' argument that the total damages are less  
12 than \$75,000.

13 Therefore, the Motion to Dismiss [Dkt. 6] is **DENIED** and the Motion to Remand [Dkt.  
14 #11] is **GRANTED**.

15 Dated this 17<sup>th</sup> day of September, 2013.

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18 RONALD B. LEIGHTON  
19 UNITED STATES DISTRICT JUDGE  
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